

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Crl.MC.No. 3518 of 2007()

CRIME NO. 626/2000 OF KASARAGOD POLICE STATION
CC.817/2006 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
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PETITIONER: 4TH & 8TH ACCUSED

1. MUSTHAF A, S/O. ABDUL KHADER,
AGED 27 YEARS, RESIDING AT PALLIKKAL,
THALANKARA, KASARAGOD DISTRICT.
2. SAMIR, S/O. MAMU,
AGED 35 YEARS, RESIDING AT SAMIR MANZIL,
THERUVATH, KASARAGOD DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENTS: STATE

THE STATION HOUSE OFFICER,
KASARAGOD POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 3518 of 2007

Dated this the 22nd day of November, 2007

ORDER

The petitioners are accused 4 and 8. They face indictment for offences punishable, inter alia, under Sections 324 and 365 r/w. 149 I.P.C. Altogether there were eight accused persons. Some of the co-accused faced trial. They were found not guilty and acquitted. The crucial witness in that case has turned hostile. As hostile witnesses for the prosecution in that case, they had made certain statements on oath, which suggest that they will not be in a position to identify any one of the accused.

2. The case against the petitioners was split up. Coercive processes have been issued against the petitioners by the learned Magistrate. The petitioners have now come to this Court with a prayer that accepting the statements of the witnesses on oath in the case in which the co-accused faced trial, the prosecution against them may be quashed.

3. The decision in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552) (FB) is a direct answer to the plea raised. It is by now trite that the evidence tendered in the trial in favour of the co-accused cannot be made a foundation and they cannot claim the said relief in favour of the absconding accused, who did not face trial. The petitioners must certainly appear before the learned Magistrate and take part in the proceedings in the split up case against them.

4. The learned counsel for the petitioners submits that warrants of arrest are issued against the petitioners. They apprehend that their applications for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They pray that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

5. It is certainly for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the applications for bail to be filed by the

petitioners when they surrender before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in Alice George v. Dy.S.P. of Police (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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